Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2001

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

JASON L. SCHWESING,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

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29pp

STATEMENT OF QUESTION PRESENTED FOR REVIEW

I.

As some Federal Circuits have held, since counsel's mere failure to pursue a Fourth Amendment claim actually enhances the reliability of the outcome at trial, it can never satisfy the "prejudice" requirement of *Strickland v Washington* standing alone. In this case, counsel did not file a Fourth Amendment motion challenging the warrantless entry by police into the home of Respondent's grandmother and ensuing seizure of evidence, because he concluded that Respondent lacked standing to contest the entry or search. Did the state courts err in holding that counsel's failure to file a Fourth Amendment suppression motion due to a legal and factual analysis which the trial court subsequently found to be in error was sufficient to establish ineffective assistance of counsel?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2001

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

-vs-

JASON L. SCHWESING,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

NOW COMES the State of Michigan, by **MICHAEL E. DUGGAN**, *Prosecuting Attorney for the County of Wayne*, **TIMOTHY A. BAUGHMAN**, *Chief of Research, Training, and Appeals*, and **JEFFREY CAMINSKY**, *Principal Attorney, Appeals*, and prays that a Writ of Certiorari issue to review the judgment of the Michigan Court of Appeals, entered in this cause on October 10, 2000, remanded on application by the Michigan Supreme Court on April 17, 2001,and leave to appeal denied by the Michigan Supreme Court on January 15, 2002.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is unpublished, and attached to this Petition as Appendix A. The order of the Michigan Supreme Court remanding the cause to the trial court is reported at — Mich — ; 625 NW2d 783 (2001), and attached as Appendix B. The order of the Michigan Supreme Court denying leave to appeal is unreported as yet, and attached as Appendix C. The trial court order post-conviction ruling on Respondent's Fourth Amendment motion to suppress evidence is unreported, and attached as Appendix D.

STATEMENT OF JURISDICTION

The Michigan Court of Appeals issued its opinion on October 10, 2000. The Michigan Supreme Court denied leave to appeal on January 15, 2002. This Court's jurisdiction is invoked under 28 USC §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Sixth Amendment to the United States Constitution provides, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> ....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 26, 1994, Inocencio Juan Nunez was shot and killed in his home in the City of Detroit. Police Officers responded to 8042 Homer on a report of a man shot. At the door of the garage, which was converted into an apartment, officers found the victim suffering from a gunshot wound to the head.[1] Nunez was taken to Detroit Receiving Hospital where he was pronounced dead on arrival. The cause of death was multiple gunshot wounds, with a fatal injury to the forehead.[2]

John Tully and Arturo Barsenas were both present when the shooting took place: hearing a knock on the door, Nunez opened it; someone wearing a dark Fila jacket and ski

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[1]IV, 51-53.

[2]IV, 35.

mask entered the apartment, told everyone to get on the floor, and fired a gun, striking Nunez, who fell to the floor in a pool of blood.[3]

Earlier that evening, Defendant and Gino Williams — also known as "Repo" — were at a house belonging to a man named Ronnie Lockhart. Eric Booterbaugh was there, when Defendant — armed with a .45 caliber pistol — came over, and began talking about robbing someone. Later, the two men returned, and re-enacted a robbery: "Repo" opened the door, and Defendant said "get down on the ground motherfucker" — leading "Repo" to get down on the ground — and then Defendant, his hand in the shape of gun, pointed his finger and made a gun sound "*pow–pow–pow*," leading "Repo" to fall as if shot. The two men re-enacted this two times — and Defendant told Booterbaugh that the re-enactment was something that happened that night.[4]

The next day, at about 10:00 pm, Detroit Police Officer Todd Adams and other officers arrived at the home of Karen McKinnon, Defendant's grandmother. Knocking on the door, he told her that he was looking for Defendant in connection with a murder. She admitted them into the house, where they found Defendant in an upstairs bedroom. Adams told Defendant that he (Defendant) would need a coat, because of the weather; Defendant motioned toward a nearby closet door, and Adams moved to retrieve the coat; on top of the coat was a plastic shopping bag, containing a handgun and two .45 caliber ammunition clips, which he confiscated. Adams also seized the jacket, which matched the description of the murderer's jacket he received from John Tully and Arturo Barsenas. Inside the jacket pockets were a black face mask, two .45-caliber bullets, and a handwritten letter — all of which were introduced at trial.[5]

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[3]V, 57-63,102-105.

[4]VI, 19-25, 60.

[5]V, 22-26, 195.

Weapon Evidence

Scientific analysis of the weapon seized from Defendant's grandmother's house revealed that it was the same gun which fired the spent casings found at the scene of the murder. Bullets found on the ground also matched those found at the house, and a fingerprint lifted from the gun's magazine matched Defendant's left index finger.[6]

Other evidence established that Defendant obtained the gun ten days before the murder, during a break-in at the home of Gregory Haske in Elmira, Michigan.[7]

Defendant's Statement

Approximately three hours after his arrest, Defendant gave a statement to police at Police Headquarters. In his statement, Defendant said that he had given his gun to a man named "Flocko," who wanted to rob somebody — receiving it back, after seeing "Flocko" shoot the gun outside the victim's house. Defendant insisted that he did not know anyone was actually shot and killed until the following day.[8]

Conviction and Appeal

Following his conviction of first-degree felony murder and felony firearm,[9] Defendant appealed his conviction to the Court of Appeals. On remand for purposes of an evidentiary inquiry into counsel's performance, trial counsel testified that he did not file a motion to quash the Information because he felt the evidence presented a factual question for the factfinder,[10] and did not file a motion to suppress evidence

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[6]V, 151, 161-162; VI, 9.

[7]IV, 96-97, 101.

[8]V, 188-192.

[9]VII, 135-137.

[10]EH II, 13-14.

seized from the grandmother's house because he thought Defendant lacked standing to contest the search.[11] While he did not know how long Defendant had been in town, or where he was staying, from speaking to the participants it was his understanding that Defendant's grandmother had consented to the police entry into her home.[12]

Testifying on Defendant's behalf at a post-conviction inquiry into the effectiveness of trial counsel, Karen McKinnon, Defendant's grandmother, denied that she had given the police permission to enter or search her home.[13] On cross-examination, however, she testified that her son James had allowed them into the house.[14] James McKinnon, however, testified that he never heard the police talking to his mother, and did not give anyone permission to enter.[15] And Defendant, while acknowledging that he lived in Grayling,[16] testified that he had come to visit his grandmother for Thanksgiving.[17] He also acknowledged that the closet where the police found the coat and other evidence seized that day was not the same room in which he was arrested.[18]

At the conclusion of the hearing, while declining to reach the merits of the underlying claims,[19] the trial court

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[11]EH II, 17-23, 35.

[12]EH II, 23.

[13]EH I, 5-9.

[14]EH I, 12.

[15]EH I, 22-26.

[16]EH III, 5.

[17]EH III, 3-6.

[18]EH III, 12.

[19]EH III, 87.

ruled that trial counsel had denied Defendant the effective assistance of counsel by failing to file a motion to suppress evidence seized from the grandmother's house, and failing to file a motion to quash the information.[20]

Subsequently, the Court of Appeals reversed Defendant's first-degree murder and felony firearm convictions, finding that he was denied the effective assistance of counsel because counsel failed to file a motion to suppress. While noting the conflicting testimony on the merits of the search and seizure claim, the Court ruled that "if defense counsel had filed a motion to suppress, it may reasonably have been successful" — and that, if successful, it "could reasonably have affected the outcome of the trial."[21] Following a remand from the Michigan Supreme Court, the trial court made a finding that it would have granted the suppression motion if counsel had filed it; subsequently, that Court denied the prosecution's application for leave to appeal.

The State now seeks certiorari.

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[20]EH III, 87-92.

[21]Court of Appeals Slip Opinion, 3.

REASONS FOR GRANTING THE WRIT

While there is a developing split of authority over the Sixth Amendment consequences of counsel's failure to file a motion to suppress evidence on grounds of unreasonable search and seizure, Michigan appears to have taken the wrong view and found counsel's mere failure to file a motion which would have succeeded to constitute ineffective assistance of counsel *per se*, without an analysis of counsel's overall performance.

Under this Court's holding in *Strickland v Washington,*[22] in order to establish a denial of his Sixth Amendment right to the effective assistance of counsel, a defendant must establish not only the incompetence of his attorney, but also the fact that counsel's errors were "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."[23] It appears to follow, as a matter of elemental logic, that any error of counsel which serves to *enhance* the reliability of the outcome cannot form the basis for a claim of ineffective assistance, since the function of counsel is not to ensure a favorable outcome, but to "render the trial a reliable adversarial testing process."[24] Moreover, concentrating on the details of counsel's performance, rather than the overall fairness of the process, is an approach at odds with the fundamental purpose of the Sixth Amendment. As the *Strickland* Court noted:

> [T]he purpose of the effective assistance guarantee of the Sixth Amendment

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[22]*Strickland v Washington,* 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

[23]*Strickland* at 687

[24]*Strickland*, at 688.

> is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendant's receive a fair trial.[25]

Thus, it is logical to conclude that counsel's mere failure to file a Fourth Amendment suppression motion will not ordinarily give rise to a finding of ineffective assistance under *Strickland*, for the same reason that Fourth Amendment claims are generally unavailable on habeas review: as it is the availability of the exclusionary sanction, rather than its unthinking imposition, that gives the sanction whatever value it has in deterring police misconduct, there is no purpose to be served by applying it in circumstances where it is not a factor. And the deterrent rationale of the Fourth Amendment exclusionary rule can hardly apply to Sixth Amendment concerns — since the exclusionary rule seeks to advance core Fourth Amendment values by removing the incentive for police to violate its protections, while the Sixth Amendment merely seeks to ensure all defendants a fair trial. But while evidence subject to suppression is excluded for reasons unrelated to its reliability, the introduction of reliable evidence actually makes the outcome more reliable; thus, while a meritorious Fourth Amendment claim may show that counsel may have overlooked something, a Fourth Amendment claim alone provides no basis for relief on habeas.[26] Rather, a habeas petitioner must satisfy the "rigorous standard which *Strickland* erected,"[27] in order to win relief. As this Court noted in *Kimmelman v Morrison*:

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[25]*Strickland*, at 689.

[26]*Kimmelman v Morrison*, 477 US 365, 382; 106 S Ct 2574;91 L Ed 2d 305 (1986); *see also*, *Stone v Powell*, 428 US 465; 96 S Ct 3037; 49 L Ed 2d 1067 (1976).

[27]*Kimmelman*, at 381.

> ...*Strickland*'s standard, although by no means insurmountable, is highly demanding. More importantly, it differs significantly from the elements of proof applicable to a straightforward Fourth Amendment claim. Although a meritorious Fourth Amendment claim is necessary to the success of a Sixth Amendment claim like respondent's a good Fourth Amendment claim alone will not earn a prisoner habeas relief. Only those habeas petitioners who can prove under *Strickland* that they have been denied a fair trial by the gross incompetence of their attorneys will be granted the writ....[28]

Thus, counsel's mere failure to advance a claim that may have succeeded is insufficient to establish ineffectiveness.[29] It is, after all, not perfection, but reasonable professionalism that is the standard, for the Sixth Amendment guarantees only a fair trial and competent counsel — not the ideal outcome,[30] nor a counsel duty-bound to recognize and raise every conceivable constitutional claim.[31] And given the deterrent

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[28]*Kimmelman*, at 382.

[29]*Cf, Lockhart v Fretwell*, 506 US 364; 113 S Ct 838; 122 L Ed 2d 180 (1993).

[30]*Lockhart v Fretwell, supra; see also, Scott v United States*, 334 F2d 72, 73 (CA 6, 1964).

[31]*Engle v Isaac*, 456 US 107, 133-134; 102 S Ct 1558; 71 L Ed 2d 783 (1982). Courts recognize that such a hide-bound approach is often counterproductive on appeal. *See, eg, Jones v Barnes*, 463 US 745, 752; 103 S Ct 3308; 77 L Ed 2d 987 (1983). It is, after all, a function of counsel's experience and effectiveness to try to narrow the focus of litigation, to assist the court — not to use a legal shotgun, hoping to hit something, but running the risk of simply losing the judge's attention along the way. And it would be an odd rule of law

rationale of the Fourth Amendment, such considerations suggest that the mere failure to seek suppression of otherwise probative evidence under the Fourth Amendment[32] will not, without more, suffice to establish a claim of ineffectiveness under the Sixth Amendment.

Some Federal Circuits have already adopted this approach: In *Holman v Page*,[33] for example, the Seventh Circuit noted the critical differences between the Fourth and Sixth Amendments, concluding that a mere difference in result under the Fourth Amendment was insufficient to establish "prejudice" under *Strickland* — thereby precluding federal habeas relief unless the petitioner could demonstrate something beyond counsel's mere failure to assert a Fourth Amendment claim to support a finding of ineffective assistance:

> It is inconsistent with the function of the [Fourth Amendment] exclusionary rule to permit a criminal defendant on federal habeas review to claim prejudice because but for his counsel's incompetence on the suppression issue he would have gotten away with the crime. Such a claim may be factually true — but that alone does not entitle a convict to a

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that granted appellate courts the benefit of counsel's focus and attention when considering precise questions of law, while denying it from the trial court or factfinder, who would otherwise be confronted with a wild and perplexing array of minutiae.

[32]The same logic suggests a different approach under the Fifth Amendment — where a claim that a confession is involuntary is, in essence, a claim that it is inherently unreliable. And we see that this Court has drawn this very distinction, treating habeas review of Fourth Amendment claims very differently than those arising under the Sixth Amendment. *Compare, Stone v Powell, supra* with this Court's decision in *Withrow v Williams,* 507 US 680 (1993).

[33]*Holman v Page*, 95 F3d 481 (CA 7, 1996).

> new trial because that alone does not constitute 'prejudice' within the meaning of *Strickland*.

Drawing the lessons of *Kimmelman*, *Strickland*, and *Lockhart v Fretwell* to include consideration of the adversarial crucible, rather than viewing various claims of error in isolation, the *Holman* Court noted that, under *Strickland*, "prejudice" related to the fairness of the proceedings and confidence in the outcome — not whether the defendant received the most favorable outcome possible under the circumstances.[34] Thus, while acknowledging that counsel's ineffectiveness in asserting a Fourth Amendment claim might lend support to an overall assessment of incompetence,[35] the Court flatly rejected the notion that a mere potential difference in the outcome of a Fourth Amendment claim could suffice to establish a claim of ineffective assistance of counsel, relying upon several aspects of black-letter law to justify its conclusion:[36]

- It is not unfair to a defendant for a jury to consider reliable but improperly gathered evidence.

- Fairness to the accused has nothing to do with the underlying purpose of the exclusionary rule, which is why Fourth Amendment claims are unavailable to a habeas petitioner.

- The purpose of the exclusionary rule is to deter misconduct by the police and law

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[34] *Holman*, at 491

[35] *Holman*, at 492.

[36] *See, Holman v Page, supra* at 491.

enforcement officers — not to grant windfalls to guilty defendants.

- And failing to apply the exclusionary rule does not "prejudicially impact the correctness of the verdict," but instead "it enhances the truthfinding process by permitting the consideration of valuable probative evidence."

Therefore, under the Seventh Circuit's approach, the mere fact of counsel's ineffectiveness in dealing with a Fourth Amendment claim will be insufficient to sustain a finding of effective assistance of counsel, since the petitioner will have suffered no "prejudice," within the meaning of *Strickland*.[37]

Applying the Seventh Circuit's rationale to this case, it is clear that Respondent cannot sustain his burden of proving ineffective assistance: given counsel's performance at trial, the record shows nothing beyond the omitted Fourth Amendment challenge to the evidence to support the state court's conclusion that Respondent was denied the effective assistance of counsel guaranteed by the Sixth Amendment. Therefore, given his performance in the cauldron of trial, any imperfections in his handling of any Fourth Amendment claim could not satisfy the *Strickland* standard of prejudice, since the introduction of the contested evidence "enhance[d] the truthfinding process by permitting the consideration of

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[37] *Holman*, at 491-492. *See also, United States v Williams*, 106 F3d 1362, 1367 (CA 7, 1997); *United States v Jones*, 152 F3d 680, 688 (CA 7, 1998). *Cf. Woods v Whitley*, 933 F2d 321, 324 (CA 5, 1991)(Noting that erroneous receipt of illegally seized evidence does not constitute "prejudice" so as to excuse omission of issue from earlier habeas petition); *Arroyo v United States*, 195 F3d 54 (CA 1, 1999)(Noting 7th Circuit approach, but finding it inapplicable on the facts).

valuable probative evidence."[38] And it follows that, under the Seventh Circuit's analysis, the District Court erred in granting the writ. Accordingly, this Court must inevitably intervene to correct the reasoning and approach of the lower courts — either now, to prevent the schism from growing,[39] or later, to resolve the conflict after it has spread.

RELIEF

WHEREFORE, this Court should grant certiorari in this matter.

MICHAEL E. DUGGAN
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Dated: February 22, 2002

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[38] *Holman*, at 491.

[39] Petitioner notes that the Sixth Circuit recently declined to follow the 7th Circuit's lead in the case of *Trippett v Northrop*, 265 F3d 372, 384-385 (CA 6, 2001)(Finding that *Strickland* set forth an "outcome-determinative" test for determining whether counsel's performance prejudiced a defendant).

Appendix A

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

v

JASON L. SCHWESING,

Defendant-Appellant.

UNPUBLISHED
October 10, 2000

No. 209543
Wayne Cir Court
LC No. 96-004800

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON L. SSCHWESING,

Defendant-Appellee.

No. 220873
LC No. 96-004800

Before: Cavanaugh, P.J., and Saad and Meter, JJ.

PER CURIAM.

A jury convicted defendant of first-degree felony-murder, MCL 750.316(1)(b); MSA 28.548(1)(b), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to life imprisonment without parole for the felony-murder conviction and to a consecutive two-year term for the felony firearm conviction. Defendant appealed his convictions as of right in Docket No. 209543. This Court, while retaining jurisdiction, subsequently granted defendant's motion to remand for a hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d (1973), based on defendant's claim that he was denied effective assistance of counsel at trial. Following an evidentiary hearing, the trial court

ruled that defendant did not receive effective assistance of counsel.[1] In Docket No. 220876, the prosecution appeals by leave granted the court's finding of ineffective assistance of counsel. The appeals have been consolidated for our consideration. We affirm the trial court's decision that defendant received ineffective assistance of counsel, reverse defendant's convictions, and remand this case for a new trial.

Evidence adduced at the *Ginther* hearing established that the police arrested defendant without a warrant at his grandmother's house, where he was staying as an overnight guest. Defense counsel did not file a motion to suppress the evidence obtained as a result of defendant's warrantless arrest, believing that defendant did not have standing to challenge the arrest. The evidence obtained as a result of the arrest - primarily a handgun and ammunition and a statement relating to these items - was the key evidence that tied defendant to the murder. There is a reasonable likelihood that without the admission of this evidence, defendant would have prevailed at trial.[2]

Defendant contends that his trial attorney's failure to file a motion to suppress the aforementioned evidence constituted ineffective assistance of counsel. To establish ineffective assistance of counsel, a defendant must show (1) that the attorney's performance was objectively unreasonable in light of the prevailing professional norms, and (2) that but for the attorney's error or errors, a different outcome would reasonably have resulted. *People v Pickens*, 446 Mich 298, 303, 314, 326-327; 521 NW2d 797 (1994).

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[1] The trial court did not order a new trial, even though it found ineffective assistance of counsel. The court erroneously believed that it had no authority to order a new trial in light of the fact that this Court retained jurisdiction following the proceedings on remand.

[2] Indeed, while the testimony of two different individuals tied defendant to the murder, the credibility of these individuals was sufficiently suspect such that we cannot deem harmless the presence or absence of the gun and ammunition evidence.

We agree with the trial court that defense counsel's misapprehension of the law with regaard to standing amounted ta as grave legal mistake, one which fell below an objective standard of reasonableness under prevailing professional norms. See *People v Toma*, 463 Mich 281, 302-303; 613 NW2d 694 (2000). Defendant's status as a personal, overnight guest at his grandmother's house established defendant's standing to contest the warrantless arrest and warrantless search of his grandmother's house, see *Minnesota v Olsen*, 495 US 91, 98-100; 110 S Ct 1648; 109 L Ed 2d 85 (1990), and certainly the circumstances of the case should have reasonably apprised defense counsel that defendant was indeed an overnight guest in the house. Moreover, defendant had standing to object to the search of the bag in which the gun and ammunition were found, because he owned the bag. See, e.g., *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

The trial court also correctly ruled that a motion to suppress the evidence, if made, would reasonably have affected the outcome of trial. The police may not make a nonconsensual entry into a person's home without a warrant in order to make a routine felony arrest. *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 S Ed 2d 639 (1980); *People v Courts*, 205 Mich App 326, 327; 517 NW2d 785 (1994). Here, it is uncontested that the police did not have a warrant. Although a police officer suggested at trial and at the preliminary examination that the grandmother consented to the search for defendant,[3] the grandmother testified at the *Ginther* hearing that she did *not* give the police permission to enter or search the house. Her son, who also lived in the house, testified

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[3] We note, however, that a consent to search must be unequivocal, specific, and freely and intelligently given. *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). The police officer's testimony here indicated that the grandmother "admit[ted]" and "allow[ed]" the police into the home. The officer's testimony leaves some question regarding whether the grandmother specifically and freely consented to a search of her house for defendant or whether she merely opened the door for the police. See *People v Davis*, 189 Mich App 468, 474; 473 NW2d 748 (1991), reversed on other grounds 442 Mich 1 (1993) (merely opening a door in compliance with a police demand does not constitute valid consent to search a house freely).

that (1) he, also, did not give the police permission to enter the house, and (2) he revoked any possible consent when the police entered by demanding that they produce a warrant before conducting a search. See *People v Powell*, 199 Mich App 492, 496-498; 502 NW2d 353 (1996). The foregoing facts indicate that if defense counsel had filed a motion to suppress, it may reasonably have been successful and, if so, could reasonably have affected the outcome of the trial. See *Toma, supra* at 303. Indeed, if the police illegally entered the house to effect defendant's warrantless arrest, then the evidence obtained as a result of the arrest, including the gun, ammunition, and defendant's statement regarding the gun and ammunition, would have been excluded. See *People v Spencley*, 197 Mich App 505, 508; 495 NW2d 824 (1992). Since the evidence obtained as a result of the arrest was strong evidence tying defendant to the charged crimes, the suppressing of the evidence could reasonably have precluded defendant's convictions.[4] See *Toma, supra* at 303.

We affirm the trial court's finding that defendant received ineffective assistance of counsel, reverse defendant's convictions and remand this case for a new trial. We do not retain jurisdiction. Given our resolution of this issue, we need not address the remaining issues presented in this consolidated appeal.

/s/Mark J. Cavanagh
/s/Henry W. Saad
/s/Patrick M. Meter

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[4] See footnote 2, *supra*.

Appendix B
Michigan Supreme Court Order (remanding for further proceedings)

Order

Entered: April 17, 2001

Michigan Supreme Court, Lansing Michigan

Maura D. Corrigan, Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman, Justices

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant,

v

JASON L. SCHWESING,

Defendant-Appellee.

SC: 117997-8
COA: 209543
220879
Wayne CC: 96-004800

On order of the Court, the application for leave to appeal from the October 10, 2000, decision of the Court of Appeals is considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REMAND this case to the

Michigan Supreme Court Order
(remanding for further proceedings)

Wayne Circuit Court for a hearing.

Within 45 days from the date of entry of this order, the circuit court shall conduct a suppression hearing on the admissibility of evidence seized as a result of defendant's arrest at his grandparent's residence and it shall forward findings on the question of whether there was a Fourth Amendment violation to the Clerk of the Court within 45 days after the conclusion of the hearing.

We retain jurisdiction.

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I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at he direction of the Court.

_____, 200 _____

Clerk

Appendix C
Michigan Supreme Court Order (denying leave to appeal)

Order

Entered: January 15, 2002

Michigan Supreme C
Court, Lansing,
Michigan

117997-8 & (96)

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

v

SC: 117997-8
COA: 209543
220876
Wayne CC: 96-004800

JASON L. SCHWESING,

Defendant-Appellee.

On April 17, 2001, this Court, while retaining jurisdiction, remanded the matter to the Wayne Circuit Court for a hearing and findings relative to search and seizure.

The hearing having been conducted on October 5, 2001, and the transcript having been filed with the court on November 21, 2001, the application for leave to appeal from the October 10, 2000 decision of the Court of Appeals is

again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by the Court.

Corrigan, C.J., and Markman, J., would grant leave to appeal.

Pah: 0110

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

_____, 200 _____

Clerk

Appendix D
Trial Court Ruling

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs No. 94-04800

JASON LEE SCHWESING,
Defendant.
/

ORDER

At a session of said Court held in the City of Detroit, County of Wayne, State of Michigan on OCT 12 2001.

PRESENT: Hon. JUDGE DEBORAH A. THOMAS.

This cause having come to be heard on remand from the Supreme Court, with directions to conduct a further evidentiary hearing into Defendant's claim of unreasonable search and seizure, as part of an inquiry into Defendant's

claim of ineffective assistance of counsel; and the Court having conducted an evidentiary hearing, and being fully advised in the premises:

IT IS THEREFORE ORDERED that this Court finds that Defendant's motion to suppress evidence would be GRANTED, for the reasons stated on the.

JUDGE DEBORAH A. THOMAS

_____

CIRCUIT COURT JUDGE

Approved as to form: